

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 8165 of 1998

with

SPECIAL CIVIL APPLICATION No 8166 of 1998

and

SPECIAL CIVIL APPLICATION No 8172 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SMT. PN SHAH

VERSUS

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for the Petitioners

MR HH PATEL for MR HC PATEL for Respondents

No.1 and 2

MR HS MUNSHAW for Respondent No.3

CORAM : MR JUSTICE S.K. KESHOTE

Date of Decision : 08/09/1999

C.A.V. JUDGMENT

1. Rule. Shri H.H. Patel waives the service of rule on behalf of the respondents No.1 and 2 and Shri H.S. Munshaw waives the service of Rule on behalf of the respondent No.3 in all these special civil applications.

2. As in all these three special civil applications, common questions of law and facts arise, the same are being taken up for hearing together and are being disposed of by this common judgment.

3. Learned counsel for the parties are in agreement that so far as the special civil application No.8172/98 is concerned, to the extent it relates to the petitioners other than the petitioner No.4 therein is squarely covered by the decision given by this court in Sp. Civil Application No.8181 of 1998.

4. The facts of the case are that the petitioners are serving as Assistant Child Development Project Officers or Mukhya Sevikas in the pay scale of Rs.1400-2300 in the office of the District Panchayat, Mahesana. They claimed the benefit of higher pay scheme on completion of nine years services and the same has been denied on the ground that they have not passed the prescribed departmental examination for promotion to the next higher post. It is not in dispute that this examination is provided under the Rules, which came into force w.e.f 14th January, 1993, which position has not been disputed by the learned counsel for the respondents. It is also not in dispute that the first examination, after coming into force of the rules, was held after March, 1993. It is not in dispute that all the petitioners have now passed the examination.

5. It is the defence of the respondents No.1 and 2 that the eligibility for getting the benefit of higher pay scale was not with the petitioners on the day on which they have completed nine years services, and as such, they could not have been given the said benefit. So far as the grant of benefit of higher pay scale to the petitioner after passing of the examination is concerned, it is the case of the respondents that the petitioners have to complete nine years of services from

the date of passing of the examination or in all the circumstances they can be given the benefit of the higher pay scale only from the date on which the petitioners pass the said examination.

6. So far as the first ground is concerned, it does not stand to any logic as well as to any rationality.

7. So far as the second defence is concerned, it is suffice to say that it needs to be considered whether the eligibility for higher pay scale relates to the date on which the petitioners pass the departmental examination or from the date on which they complete the nine years services. For this, a decision has to be taken by the State Government as this question may arise in many of the cases. It is really shocking that in such matters, instead of taking a policy decision, the State Government has come up with such an absurd and perverse defence.

8. So far as the District Panchayat is concerned, in substance, it is not having any objection in granting of the higher pay scheme benefits to the petitioners but as the Government is not clarifying the position, what in the contention of the learned counsel for the District Panchayat a legal position, the benefits could not be extended to the petitioners.

9. In the result, all these special civil applications are disposed of in terms that all the employees of this category who have completed nine years services before 14th January, 1993, shall be entitled for the benefit of higher pay scheme, if otherwise, they are eligible. To make it clear, they will not be denied of the higher pay scheme benefits only on the ground that they have not passed the departmental examination as prescribed under the Rules, 1993. For the other employees other than of this category, the State of Gujarat, through Secretary, Health and Family Welfare Department, Gandhinagar is directed to decide this question that from which date those class of persons shall be eligible for the benefit of higher pay scale i.e. the date on which they complete the nine years series or from the date on which they pass the examination. For this, a decision has to be taken and more so where the petitioners desire an opportunity of personal hearing then after hearing them within a period of two months from the date of receipt of writ of this judgment. The petitioners shall be entitled for the said benefits as per the decision taken in the matter by the State Government. However, liberty is granted to

the petitioners for revival of these special civil applications in case of difficulty. The special civil applications and Rule therein stands disposed of accordingly. However, the parties are directed to bear their own costs.

zgs/-